

Serial No. 09/727,117

Atty. Docket No. Mo 6049

REMARKS

Applicants respectfully request reconsideration and reexamination of the present application in light of the amendments and the remarks below.

Applicants would like to thank Examiner Qazi for the recent teleconference concerning proposed amendments to the claims and the double patenting rejection.

Claims 9-20 are pending in this application. Claims 9-12, 14-17, 19, and 20 have been amended. These claim amendments are made to clarify the subject matter therein. Therefore, these amendments are submitted in order to place the claims in condition for allowance, and do not disclaim any subject matter to which the Applicants are entitled.

Amendment to Claims

Claims 9-12, 14-17, 19, and 20 have been amended. Specifically, the claims have been amended to recite "nicotiny1" compound. Support for these amended claims may be found, for example, on page 1, lines 23-28; page 2, lines 2-5; pages 4-10 of the specification.

Double Patenting

The Examiner has rejected claims 9-20 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4-7 of co-pending Application Serial No. 10/682,127 (Sirinyan, et al.) (Paper No. 03122005, pages 3-4). The Examiner stated that this is a provisional double patenting rejection since the conflicting claims have not yet been patented. Also, the Examiner stated that these applications share a common assignee.

As discussed with Examiner Qazi, for clarification of the common assignee, the pending application, Serial No. 09/727,117, is assigned to Bayer HealthCare LLC. Co-pending Application Serial No. 10/682,127 is assigned to Bayer Aktiengesellschaft. However, Bayer HealthCare LLC is a wholly-owned subsidiary of Bayer Aktiengesellschaft.

Also, the double patenting rejection has been raised over co-pending Application Serial No. 10/682,127. At this time, it remains unknown what subject matter claimed in these co-pending applications will be deemed allowable; hence any statement regarding this rejection made on Applicants' part would be premature. However, as discussed with Examiner Qazi, the resolution of the double patenting issue would be addressed during prosecution of co-pending Application Serial No. 10/682,127. Therefore, Applicants respectfully request that this rejection should be held in abeyance until subject matter is deemed allowable in this application.

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CONCLUSION

For the foregoing reasons, Applicants submit that the claims are in condition for allowance and Applicants respectfully request reexamination of the present application, reconsideration and withdrawal of the present rejections, and entry of the amendments. Should there be any further matter requiring consideration, Examiner Qazi is invited to contact the undersigned counsel.

If there are any further fees due in connection with the filing of the present reply, please charge the fees to undersigned's Deposit Account No. 13-3372. If a fee is required for an extension of time not accounted for, such an extension is requested and the fee should also be charged to undersigned's deposit account.

Respectfully submitted,

Date: September 14, 2005

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